IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.706 OF 2005

Sandeep Dara Appellant

Vs.

Municipal Corporation of Gr.Mumbai Respondent

Mr.D.G.Aras for appellant.
Ms.Geeta Jogalekar for respondent.

CORAM: B.H.MARLAPALLE,J.
June 28, 2005.

ORAL ORDER:

1. Heard the learned counsel for the appellant.

The Corporation had issued a notice dated 18-2-2002 invoking the powers under Section 351 of the Mumbai Municipal Corporation Act calling upon the appellant to demolish the structure which was put up below the water tank in the of 4th floor terrace, Rose Nivas Society, Kadeshwari Road, Bandra (West). The plaintiff filed reply and by the order dated 6-4-2002, all the contentions raised by the plaintiff were discarded and the structure was directed to be removed within 15 days. This order came to be challenged in L.C. Suit No.2060 of 2002 in which Notice of Motion No.1545 of 2002 was taken out for temporary injunction. By the impugned order dated

20-4-2005 the said notice of motion has been dismissed by the learned Judge of the City Civil Court at Mumbai.

2. Admittedly the plaintiff purchased the flat no.11 located on the 4th floor with full open terrace, by a written agreement from the builder. The structure put up on the top of the terrace and below the water tank is claimed to be always there right from 1967 and the plaintiff further claimed that it was presumed to be an authorised structure. The trial court noted that the agreement by which the flat was purchased did not show the existence of such structure and before the datum line i.e. 17-4-1964 the structure was not in existence. Either the builder or the plaintiff had put up this structure by using the four pillars on which the water tank was standing on top of the fourth floor. The plaintiff was issued show cause notice, he was heard before the order dated 6-4-2002 was passed. There is no case made out to interfere with the view taken by the trial Court in dismissing the Notice of Motion and, therefore, this appeal must fail at the threshold.

3. The appeal is hereby dismissed in limine. The

ad-interim order of status quo will continue to operate for a period of four weeks more provided the plaintiff files an affidavit with the Registry of this Court or with the trial court undertaking to demolish the suit structure on his own and such affidavit shall be presented on or before 1st July 2005.

(B.H.MARLAPALLE,J.)